IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff

v.

Felix De Los Santos-Hernandez (2),

Defendant

Criminal No. 21-002 (CVR)

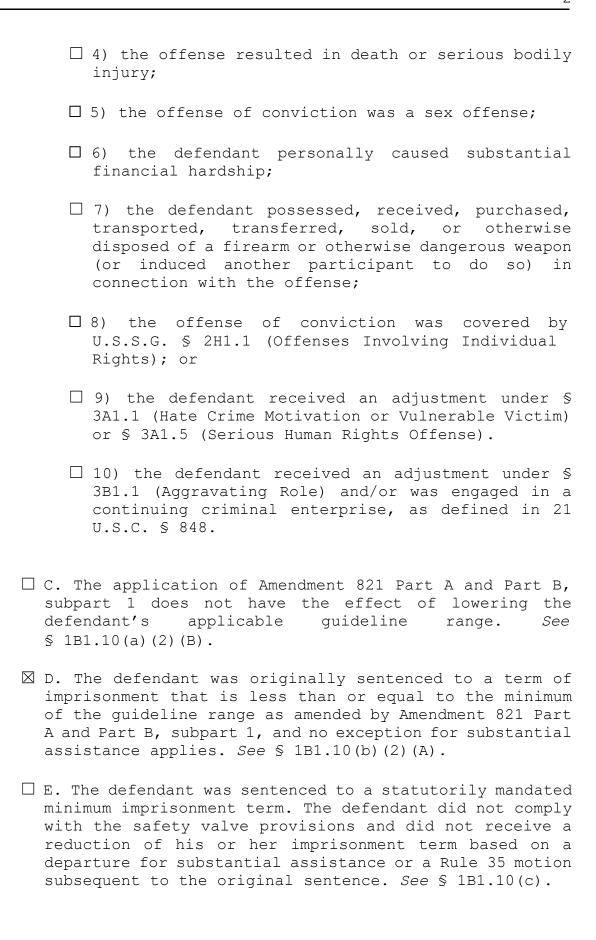
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION Re: Amendment 821

The below report and recommendation relates to an initial determination as to the defendant's eligibility for a sentencing reduction promulgated by the United States Sentencing Commission under Part A and Part B, Subpart 1 of Amendment 821 to Policy Statement § 1B1.10(d).

After careful review of the defendant's presentence report, charging document(s), plea agreement, plea supplement, judgment, and statement of reasons, I recommend that:

\boxtimes The defendant is <u>not</u> eligible for a sentence reduction based on the following factor(s):

- ☐ A. The guidelines range that applied in the defendant's case was not determined by U.S.S.G. § 4A1.1(d) or defendant's status as a zero-point offender under Chapter 4, Part A.
- \square B. The defendant does not meet <u>all</u> of conditions specified by § 4C1.1. Specifically, one or more of the following criteria applies:
 - ☐ 1) the defendant has criminal history points from Chapter Four, Part A;
 - ☐ 2) the defendant received an adjustment under U.S.S.G. § 3A1.4 (Terrorism);
 - ☐ 3) the defendant used violence or credible threats of violence in connection with the offense;



Since a determination of ineligibility has been made, the matter is formally submitted to the presiding District Court Judge. Defense counsel, whether retained, appointed, or pro bono, has fourteen days to object to the initial assessment of ineligibility. After the fourteen day period, and in the absence of an objection by defense counsel, the presiding District Court Judge may adopt the recommendation of the Magistrate Judge and may rule on the motion for reduction of sentence.

☐ The defendant <u>may be</u> eligible for a sentence reduction and therefore the matter is referred to a United States District Judge.

The presiding judicial officer shall wait for the parties' stipulation of a sentence reduction within fourteen days. If no stipulation is reached within this period, the presiding judicial officer shall wait for the United States Probation Office, defense counsel, and the Government's memoranda, which shall be filed within another fourteen days.

Reasons:

De Los Santos-Hernandez is a zero-point offender. However, he is not eligible for a sentence reduction because he was sentenced to 87 months, which is less than the new applicable guideline range. The statement of reasons indicates defendant was sentenced at offense level 33. Dkt. 353. However, the court apparently applied Guideline §2D1.1(b)(18) reducing the total offense level to 31. Applying Amendment 821, defendant's offense level is reduced to 29 for a guideline range of 87-108 months. Because defendant received an 87-month sentence, which is equal to the minimum of his new applicable guideline range, he is not eligible for further reduction.

IT IS SO RECOMMENDED.

In San Juan, Puerto Rico, this <a>14th of <a>May, 2024.

s/ Bruce J. McGiverin

UNITED STATES MAGISTRATE JUDGE